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No. 10

Legislative Notice

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S. 254 — Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999 (the “Juvenile Justice Bill”)

Calendar No. 8

S. 254 was introduced January 20, 1999. It was not referred to a committee but placed directly on the Calendar after it was read a second time. There is no committee report.

NOTEWORTHY

- By unanimous consent, the Senate will begin consideration of S. 254 on Tuesday, May 11, at 9:30 a.m., with debate only until noon.
- The Senate Judiciary Committee has been working for several years on a reform of the Federal response to juvenile crime. S. 254 builds on similar measures of the last two Congresses and is the culmination of the committee's work.
- S. 254 authorizes \$1 billion per year for five years (FYs 1999 - 2004) to prevent and fight juvenile crime.
- S. 254 contains what has been called a “juvenile Brady” provision, i.e. a prohibition on possessing a firearm by any person who was convicted of a violent felony as a juvenile.
- S. 254 contains a number of provisions amending substantive criminal law. For example, the bill makes it a crime to recruit a person into a criminal gang, and adds additional penalties if the person recruited is a juvenile.

BACKGROUND

Congress enacted the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA), Pub. L. 93-415, 88 Stat. 1109, in response to reports of dangerous conditions in the facilities used to detain

juveniles who were charged with status offenses or who were arrested for or convicted of crimes. The JJDPA provided financial assistance to States in order to assist the States in improving their juvenile justice systems. The 1974 Act also established the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and directed it to give formula grants to the States and to monitor their compliance with the requirements of the Act. The Act also created opportunities for research, evaluation, and demonstration projects. The Act has been funded regularly (although not reauthorized since it expired in 1996), and new mandates and programs have been added. The basic approach of the 1974 Act has, however, remained largely unchanged.

Today, the Committee points to the following sobering statistics: In 1997, persons under 18 years of age accounted for 14 percent of all murders, 17 percent of all rapes, 30 percent of all robberies, and 50 percent of all arsons. Kids who are not old enough to drive are being charged with murder: In 1997, 183 juveniles under the age of 15 were arrested for murder. Persons aged 15 through 19 years constitute just 7 percent of the population, but in 1997 they were responsible for 21 percent of all violent crimes and 32 percent of all property crimes.

Juvenile criminals have become more violent, and, despite some recent good news, there is the prospect that juvenile crime is going to surge simply because of the size of the population that is entering adolescence. In 1995 the Judiciary Committee wrote, "The Nation faces a significant increase in youth violence [into the middle of the next decade] simply due to demographics even if crime rates among young people stabilized." S. Rept. 104-369 at 5 (quoting "Facing the Future").

HIGHLIGHTS

S. 254 contains four titles.

Title I reforms the procedures for juveniles who commit federal crimes (of course, the vast majority of juvenile cases are handled by state and local governments).

Title II increases penalties for persons who participate in gangs, and for those who recruit or solicit the participation in gangs.

Title III contains the core provisions in this bill. It reforms federal aid to the states and localities, and restructures the federal grant programs. The bill authorizes \$1 billion per year for five years (FYs 1999 - 2004) to prevent and fight juvenile crime. That \$1 billion will be distributed as follows:

- \$450 million for the Juvenile Accountability Incentive Block Grants program whereby States and local governments may receive grants for detention facilities, juvenile drug testing, juvenile record keeping, the prevention and disruption of youth gangs, technology and training, or any of several other purposes related to youth crime. States are eligible only if they adopt (or provide assurances that they will adopt) (1) graduated sanctions for juvenile offenders, (2) a policy of testing juveniles for drugs upon their arrest, and (3) policies that recognize the rights and needs of victims of juvenile crime.

- \$435 million for juvenile crime prevention programs (46 percent of this sum will be used for block grants; 46 percent for formula grants; and 8 percent for other grant programs).
- \$75 million for grants so that States can upgrade their juvenile felony records and their record-keeping systems, and so that the most serious offenders can be entered into the national criminal history database.
- \$40 million for research and evaluation of the effectiveness of programs for juveniles.

Title IV's Miscellaneous Provisions contain the so-called "juvenile Brady" provision, and grants for jail-based substance abuse treatment programs.

BILL PROVISIONS

The following section-by-section summary was written and prepared by the Majority staff of the Senate Judiciary Committee, and reflects the bill as it was placed on the Calendar on January 20, 1999:

Senate Committee on the Judiciary

S. 254

Section-By-Section Analysis

Attached is a summary of the major provisions of S. 254, the Hatch-Sessions Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999, as introduced on January 20, 1999. Should you have any questions about the bill not answered by this summary, please call Mike Kennedy or Rhett DeHart of the Senate Judiciary Committee staff at (202) 224-5225.

General Provisions

SEC. 1 *Short Title, Table of Contents*

This section entitles the bill as the "Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999", and provides a table of contents for the bill.

SEC. 2 *Findings and Purpose*

This section provides Congressional findings related to juvenile crime, the juvenile justice system, and the changes needed to reform the juvenile justice system to curb youth violence, ensure accountability by youthful criminals, improve federal juvenile delinquency prevention efforts, and recognize the needs of crime victims.

SEC. 3 *Severability*

This section provides severability for the provisions of the Act.

Title I - Juvenile Justice Reform

This title reforms the procedures by which juveniles who commit Federal crimes are prosecuted and punished.

SEC. 101 *Repeal of General Provision*

This section repeals the provision establishing the general practice of surrendering to State authorities juveniles arrested for the commission of Federal offenses.

SEC. 102 *Treatment of Federal Juvenile Offenders*

General Provisions: This section gives the U.S. Attorney the discretion to prosecute juveniles age 14 years or older as adults for violations of Federal law which are serious violent felonies or serious drug offenses (as these terms are defined in 18 U.S.C. 3559, the Federal 3-strikes statute). Juveniles 14 and older may be prosecuted as adults for any other felony violation of Federal law only with the approval of the Attorney General. If approval is not given, or, for all misdemeanor violations of Federal law, juveniles would be proceeded against as juveniles, or referred to State or tribal authorities. Referral to state or tribal authorities would be presumed in all cases of concurrent state and federal jurisdiction, unless the state refused the case, or an overriding federal interest existed. In the special case of juveniles alleged to have committed a federal offense and who have on a prior occasion been tried and convicted as an adult in federal court, waiver to adult status would be automatic.

Reverse Waiver Provision: Juveniles 15 and younger charged as an adult for serious violent felonies or serious drug offenses, and juveniles of any age charged as an adult for other felonies, may appeal their waiver to adult status. The juvenile would have 20 days to seek a judicial order returning the juvenile to juvenile status. The prosecutor would be permitted an interlocutory appeal from an adverse ruling, but a juvenile's appeal would be consolidated at the end of the case.

Application to Indian Tribes: This section also includes a limited tribal opt-in for Native American juveniles 15 and under when federal jurisdiction is based solely on the commission of the offense on tribal land. A tribal opt-in to federal procedures would be required to prosecute these juveniles as adults, although they could still be adjudicated in federal delinquency proceedings, even in the absence of a tribal opt-in.

Procedures: When prosecuted as adults, juveniles in Federal criminal cases would be subject to the same procedures and penalties as adults, including availability of records, open proceedings, and sentencing procedures. Exceptions are provided waiving the application of mandatory minimums to juveniles under age 16 who have no previous serious violent felony or serious drug offense convictions, and barring the availability of the death penalty in any offense committed before the juvenile was 18.

This section also provides that juveniles tried as adults and sentenced to prison must serve their entire sentences, and may not be released on the basis of attaining their majority, and applies to juveniles convicted as adults the same provisions of victim restitution, including mandatory restitution, that apply to adults.

SEC. 103 *Definitions*

This section provides definitions for terms used, including new definitions to ensure that juveniles accused or convicted of Federal offenses are separated from adults and to conform the definition of the term "juvenile" with the procedural changes made by this title.

SEC. 104 *Notification after Arrest*

This section conforms the requirement, in 18 U.S.C. 5033, that certain persons be notified of the arrest of a juvenile for a Federal crime, with the procedural changes in section 102 of this subtitle, which vests discretion to prosecute juveniles as adults with the U.S. Attorney for the district in the appropriate jurisdiction. This section also provides for the notification of the juvenile's parents or guardians, and prohibits the post-arrest housing of juveniles with adults.

SEC. 105 *Release and Detention Prior to Disposition*

This section provides for pretrial detention juveniles tried as adults on the same basis as adults, and prohibits the pretrial or pre-disposition detention of juveniles with adults.

SEC. 106 *Speedy Trial*

This section extends, from 30 to 70 days, the time in which the trial of a juvenile in detention must be commenced, and applies in juvenile cases the same tolling provisions for such time periods that apply in adult prosecutions.

SEC. 107 *Dispositional Hearings*

This section provides for the sentencing of those juveniles found to be delinquent, but not tried as adults. It provides for a hearing on the matter within 40 days of an adjudication of delinquency, and provides for victim allocution at the hearing. The section provides a range of sentencing options to the court, including probation, fines, restitution, and/or imprisonment, and provides that terms of imprisonment may be imposed upon them for the same term as adults, except that such imprisonment must be terminated on the juvenile's 26th birthday. Juveniles sentenced to imprisonment may not be released solely on the basis of attaining their majority.

SEC. 108 *Use of Juvenile Records*

This section provides that the federal criminal records of juveniles tried as adults, and the federal delinquency records of juveniles adjudicated delinquent for certain serious offenses such as murder, rape, armed robbery, and sexual abuse or assault, are to be treated for all purposes in the same manner as the records of adults for the same offenses. Other federal felony juvenile criminal or delinquency records would be treated the same as adult records for criminal justice or national security background check purposes.

This section also permits federal felony juvenile criminal and delinquency records to be provided to schools and colleges under rules issued by the Attorney General, provided that recipients of the records are held to privacy standards and that the records not be used to determine admission.

SEC. 109 *Implementation of a Sentence for Juvenile Offenders*

This section provides for the implementation of a sentence imposed on a delinquent or criminal juvenile and directs the Bureau of Prisons to not confine juveniles in any institution where the juvenile would not be separated from adult inmates.

SEC. 110 *Magistrate Judge Authority Regarding Juvenile Defendants*

This section extends the jurisdiction of Federal magistrate judges to class A misdemeanors involving juveniles; permits magistrate judges to impose terms of imprisonment on juveniles; and conforms the section conferring authority on magistrate judges with the procedural changes made by section 102.

SEC. 111 *Federal Sentencing Guidelines*

This section conforms the Sentencing Reform Act to ensure that the Federal Sentencing Guidelines relating to maximum penalties for violent crimes and serious drug crimes apply to juveniles tried as adults.

This section also amends the Sentencing Reform Act to direct the Sentencing Commission to promulgate sentencing guidelines for sentencing juveniles tried as adults in Federal court, and for dispositional hearings (the equivalent of sentencing) for juveniles adjudicated delinquent in the Federal system.

SEC. 112 *Study and Report on Indian Tribal Jurisdiction*

This section requires the Attorney General to study and report to the Congress on the capabilities of tribal courts and criminal justice systems relating to the prosecution of juvenile criminals under tribal jurisdiction, and requires the Attorney General to evaluate an expansion of tribal court criminal jurisdiction.

Title II - Juvenile Gangs

SEC. 201 *Solicitation or Recruitment of Persons in Criminal Gang Activity*

This section makes the recruitment or solicitation of persons to participate in gang activity subject to a one-year minimum and 10-year maximum penalty, or a fine of up to \$250,000. If a minor is recruited or solicited, the minimum penalty is increased to four years. In addition, a person convicted of this crime would have to pay the costs of housing, maintaining, and treating the juvenile until the juvenile reaches the age of 18 years.

SEC. 202 *Increased Penalties for Using Minors to Distribute Drugs*

SEC. 203 *Penalties for Use of Minors in Crimes of Violence*

This section increases twofold, and for a second or subsequent offense threefold, the penalties for using minors in the commission of a crime of violence.

SEC. 204 *Amendment of Sentencing Guidelines With Respect to Body Armor*

This section directs the United States Sentencing Commission to provide a minimum two-level sentencing enhancement for any defendant committing a Federal crime while wearing body armor.

SEC. 205 *High Intensity Interstate Gang Activity Areas*

This section authorizes the Attorney General to establish joint agency task forces to address gang crime in areas with high concentrations of gang activity. This provision authorizes \$100 million per year for this program; \$75 million per year is authorized for establishment and operation of High Intensity Interstate Gang Activity Areas, and \$25 million per year is authorized for community-based gang prevention and intervention for gang members and at-risk youth in gang areas.

SEC. 206 *Increasing the Penalty for Using Physical Force to Tamper With Witnesses, Victims, or Informants*

This section increases the penalty from a maximum of 10 years' imprisonment to a maximum of 20 years' imprisonment for using or threatening physical force against any person with intent to tamper with a witness, victim, or informant. This section also adds a conspiracy penalty for obstruction of justice offenses involving victims, witnesses, and informants. In addition, this section makes traveling in interstate or foreign commerce to bribe, threaten, or intimidate a witness to delay or influence testimony in a State criminal proceeding a violation of the Federal Travel Act, 18 U.S.C. Section 1952.

Title III - Juvenile Crime Control, Accountability, and Delinquency Prevention

This title reforms and enhances federal assistance to State and local juvenile crime control and delinquency prevention programs. Subtitle A amends and reauthorizes the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP), to provide assistance to States for effective youth crime control and accountability.

SEC. 301 Findings; Declaration of Purpose; Definitions

This section rewrites Title I of the JJDP. It updates and revises the Congressional findings and declaration of purpose contained in the JJDP to reflect the reality of violent juvenile crime, promote the primacy of accountability in the juvenile justice system, and recognize the rights and needs of victims of juvenile crime. This section also revises and updates the definitions governing the JJDP.

SEC. 302 Juvenile Crime Control and Delinquency Prevention

This section rewrites Title II of the JJDP. It reforms and renames the current Office of Juvenile Justice and Delinquency Prevention within the Department of Justice, improves services to State and local governments, and reforms and streamlines existing JJDP grant programs. Among the specific provisions of the rewritten JJDP Title II:

- Reforms JJDP Title II Part A -- the Office of Juvenile Justice and Delinquency Prevention (OJJDP) of the Department of Justice, is renamed the Office of Juvenile Crime Control and Prevention (OJCCP), with an Administrator appointed by the President and confirmed by the Senate. This section also enhances the effectiveness of the OJCCP by requiring the OJCCP Administrator to:
 - present to Congress annual plans, with measurable goals, to control and prevent youth crime;
 - coordinate all Federal programs relating to controlling and preventing youth crime;
 - disseminate to States and local governments data on the prevention, correction, and control of juvenile crime and delinquency, and report on successful programs and methods; and
 - serve as a single point of contact for States, localities, and private entities to apply for and coordinate all federal assistance and programs related to juvenile crime control and delinquency prevention.
- Consolidates numerous JJDP programs, including Part C Special Emphasis grants, State challenge grants, boot camps, and JJDP Title V incentive grants, under an enhanced prevention challenge block grant to the States.

- Reauthorizes the State formula grants under Part B of Title II of the JJDPa:

Reforms the 3 current "core mandates" on the States relating to the incarceration of juveniles (known as sight and sound separation, jail removal, and status offender mandates,) to ensure the protection of juveniles in custody while providing state and local governments with needed flexibility; provisions are based on H.R. 1818 from the 105th Congress, but to ensure that abuse of juvenile delinquent inmates is not permitted, includes modified definitions from S. 10 of the 105th Congress regarding what constitutes contact between juveniles and adults -- no prohibited physical contact or sustained oral communication would be permitted between juveniles delinquents in detention and adult inmates;

Modifies the current "core mandate" requiring states to address efforts to reduce the disproportionate number of minorities in juvenile detention in comparison with their proportion to the population at large, to make the language race-neutral and constitutional; and

The four "core mandates" retained in modified form are each enforceable by a 12.5-percent reduction in a State's Part B funding for non-compliance. The Administrator may waive the penalty.

- Revises JJDPa Title II Part C, to enhance federal research efforts into successful juvenile crime control and delinquency prevention programs;
- Reauthorizes JJDPa Title II Part D Gang prevention programs, and reforms the program to provide an emphasis on the disruption and prosecution of gangs;
- Includes a discretionary prevention grant program designated as Part E of Title II of the JJDPa;
- Retains the current Part G Mentoring program under Title II of the JJDPa, redesignating it as Part F, and adding a pilot program to encourage and develop mentoring programs that focus on the entire family instead of simply the juvenile and which utilize the existing resources and infrastructure of the Cooperative Extension Services of Land Grant Universities; and
- Designates JJDPa Title II Part G for administrative provisions, including:
 - Providing rules against use of federal funds for behavior control experimentation, lobbying, or litigation;
 - Subjecting JJDPa and Juvenile Accountability Block Grants (in Title III, Subtitle B of this bill) to a religious and charitable non-discrimination provision cross-referenced from the welfare reform law;
 - Providing significant funding directly from the Department of Justice for juvenile delinquency prevention and juvenile accountability programs in Indian country; and

Providing authorizations of appropriations for the JJDPA and the Juvenile Accountability Block Grants, as follows:

- Authorizes \$1 billion per year for five years, under the following formula:
 - ✓ \$450 million (45%) for Juvenile Accountability Block Grants
 - ✓ \$435 million (43.5%) for prevention programs under the JJDPA, including
 - \$200 million for Juvenile Delinquency Prevention Block Grants
 - \$200 million for Part B Formula grant prevention programs
 - \$35 million for Gangs, Mentoring and Discretionary grant programs
 - ✓ \$75 million (7.5%) for grants to states to upgrade and enhance juvenile felony criminal record histories and to make such records available within NCIC, the national criminal history database used by law enforcement, the courts, and prosecutors
 - ✓ \$40 million (4%) for NIJ research and evaluation of the effectiveness of juvenile delinquency prevention programs

SEC. 303 *Runaway and Homeless Youth*

This section reforms the Runaway and Homeless Youth program, and reauthorizes it through FY 2004. The reforms streamline the program, provide for targeting federal assistance to areas with the greatest need, and make numerous technical changes.

SEC. 304 *National Center for Missing and Exploited Children*

This section improves and reauthorizes the Missing and Exploited Children program through FY 2004, providing on-going authorization for grants to the National Center for Missing and Exploited Children.

SEC. 305 *Transfer of Functions and Savings Provisions*

This section provides technical and administrative rules to transfer functions, and to govern the transition from the Office of Juvenile Justice and Delinquency Prevention to the Office of Juvenile Crime Control and Prevention.

Subtitle B Accountability for Juvenile Offenders and Public Protection Incentive Grants

SEC. 321 *Block Grant Program*

Accountability Block Grant: This section establishes an incentive block grant program for States, authorized at \$450 million for each of the next five fiscal years. The incentive block grants would fund a variety of programs, such as: constructing juvenile offender detention facilities; implementing graduated sanctions programs; utilizing programs for the coordination of justice and social service resources for juvenile offenders; fingerprinting or conducting DNA tests on juvenile offenders; establishing record-keeping ability; establishing SHOCAP programs; enforcing truancy laws; and various prevention programs including after-school youth activities,

antigang initiatives, literacy programs, and job training programs. Indian tribes receive separate grants under this section.

State receipt of the incentive grants would be conditioned on the adoption of three core accountability policies: the establishment of graduated sanctions to ensure appropriate correction of juvenile offenders; drug testing juvenile offenders upon arrest in appropriate cases; and recognition of victims rights and needs in the juvenile justice system.

Fifty percent of the funds under the grant program are designated for implementing graduated sanctions or increasing juvenile detention space if needed by the State. The remaining fifty percent can be used for any authorized grant purpose. Detention space construction projects must be funded by not less than fifty percent of State or local (i.e., non-federal grant) money.

The block grant includes a pass-through requirement intended to provide a formula for local funding that reflects the needs and responsibilities of state and local levels of government. Seventy percent of the funds received by the State under this block grant must be passed through to the local level, unless the State organizes its juvenile justice system exclusively on the State level.

Juvenile Records Grants: Juvenile records improvement grants are authorized at \$75 million per year for five years. Grants are intended to encourage states to improve the quality and availability (including interstate availability) of certain juvenile delinquency records. To qualify for a federal grant, states would have to agree to treat the records of juveniles who commit and are adjudicated delinquent for the felonies of murder, armed robbery, and sexual assault be treated the same as adult criminal records for the same offenses in the state, and to treat records of juveniles who commit any other felony, for criminal justice purposes only, the same as adult criminal records for the same offenses. Such records would be available interstate within the NCIC system.

SEC. 322 *Pilot Program to Promote Replication of Recent Successful Juvenile Crime Reduction Strategies*

This section authorizes the Attorney General to fund pilot programs to replicate the successful juvenile crime reduction program utilized by Boston, Massachusetts. Pilot program grant recipients would adopt a juvenile crime reduction strategy involving close collaboration among Federal, State, and local law enforcement authorities, and including religious affiliated or fraternal organizations, school officials, social service agencies, and parent or local grass roots organizations. Emphasis would be placed on initiating effective crime prevention programs and tracing firearms seized from crime scenes or offenders in an effort to identify illegal gun traffickers who are supplying weapons to gangs and other criminal enterprises.

SEC. 323 *Repeal of Unnecessary and Duplicative Programs*

This section repeals duplicative and wasteful programs enacted as a part of the 1994 crime law, including the Ounce of Prevention Council, the Model Intensive Grant program, the Local Partnership Act, the National Community Economic Partnership, the Urban Recreation and At-Risk Youth Program, and the Family Unity Demonstration Project.

SEC. 324 *Extension of Violent Crime Reduction Trust Fund*

This section extends the Violent Crime Reduction Trust Fund, established in the 1994 omnibus crime law, to fund programs authorized by this act.

SEC. 325 *Reimbursement of States for the Costs of Incarcerating Juvenile Aliens*

This section adds juvenile aliens to the State Criminal Alien Assistance Program, which provides reimbursement to the States for the costs of incarcerating criminal aliens.

SEC. 326 *Sense of Congress*

This section provides the sense of Congress that States should enact legislation to provide that if an offense that would be a capital offense if committed by an adult is committed by a juvenile between the ages of 10 and 14, the juvenile could, with judicial approval, be tried and punished as an adult, provided that the death penalty would not be available in such cases.

Subtitle C -- Alternative Education and Delinquency Prevention

SEC. 331 *Alternative Education*

This section amends the Elementary and Secondary Education Act (ESEA) to provide demonstration grants to state and local education agencies for alternative education in appropriate settings for disruptive or delinquent students, to improve the academic and social performance of these students, and to improve the safety and learning environment of regular classrooms. Certain matching amounts required under this program could be made from amounts available to the State or local governments under the JJDPA. Appropriations under the ESEA of \$15 million per year for four years are authorized.

Title IV -- Miscellaneous Provisions

Subtitle A -- General Provisions

SEC. 401 *Prohibition on Firearms Possession by Violent Juvenile Offenders*

This section extends the ban on firearm ownership by certain felons to persons who, as juveniles, are adjudicated delinquent for an offense which would be a serious violent felony as defined in 18 U.S.C. 3559(c)(2)(F)(i) (the federal three strikes statute), were the offense committed by an adult. The ban is prospective, applying only to delinquent acts committed after records of such offenses are routinely available within the National Instant Check System instituted pursuant to the Brady Law.

Subtitle B -- Jail-Based Substance Abuse

SEC. 421 *Jail-Based Substance Abuse Treatment Programs*

This section provides that 10 percent of grants to States for drug treatment in prisons (RSAT grants) should be directed to qualified treatment programs in jails; under current law, these funds are limited to prison treatment. This section also allows RSAT grants to be used to provide post-incarceration substance abuse treatment for former inmates if the Governor certifies to the U.S. Attorney General that the State is providing, and will continue to provide, an adequate level of treatment services to incarcerated inmates.

ADMINISTRATION POSITION

At press time, no Statement of Administration Policy was available.

COST

No CBO cost estimate on S. 254 is available.

POSSIBLE AMENDMENTS

Amendments from both sides of the aisle are likely but no list of possible amendments was available at press time. Senators and staff should anticipate amendments relating to recent events at Columbine High School.

Staff contact: Lincoln Oliphant, 224-2946

[A helpful resource is the CRS Report for Congress, "Juvenile Delinquency: Comparison of Present Law and Two Proposals in the 106th Congress" (order code RL30066, February 22, 1999). In addition to present law and S. 254, the report also summarizes S. 9, the major Democratic initiative.]